



PHILIPPINE LAWS AND JURISPRUDENCE DATABANK

Republic of the Philippines
SUPREME COURT
 Manila

FIRST DIVISION

G.R. No. L-44349 October 29, 1976

JESUS V. OCCENA and EFIGENIA C. OCCENA, petitioners,
 vs.

HON. RAMON V. JABSON, Presiding Judge of the Court Of First Instance of Rizal, Branch XXVI; COURT OF APPEALS and **TROPICAL HOMES, INC.**, respondents.

Occena Law Office for petitioners.

Serrano, Diokno & Serrano for respondents.

TEEHANKEE, J.:

The Court reverses the Court of Appeals appealed resolution. The Civil Code authorizes the release of an obligor when the service has become so difficult as to be manifestly beyond the contemplation of the parties but does not authorize the courts to modify or revise the subdivision contract between the parties or fix a different sharing ratio from that contractually stipulated with the force of law between the parties. Private respondent's complaint for modification of the contract manifestly has no basis in law and must therefore be dismissed for failure to state a cause of action. On February 25, 1975 private respondent Tropical Homes, Inc. filed a complaint for modification of the terms and conditions of its subdivision contract with petitioners (landowners of a 55,330 square meter parcel of land in Davao City), making the following allegations:

"That due to the increase in price of oil and its derivatives and the concomitant worldwide spiralling of prices, which are not within the control of plaintiff, of all commodities including basis raw materials required for such development work, the cost of development has risen to levels which are unanticipated, unimagined and not within the remotest contemplation of the parties at the time said agreement was entered into and to such a degree that the conditions and factors which formed the original basis of said contract, Annex 'A', have been totally changed; 'That further performance by the plaintiff under the contract.

That further performance by the plaintiff under the contract, Annex 'S', will result in situation where defendants would be unjustly enriched at the expense of the plaintiff; will cause an inequitous distribution of proceeds from the sales of subdivided lots in manifest actually result in the unjust and intolerable exposure of plaintiff to implacable losses, all such situations resulting in an unconscionable, unjust and immoral situation contrary to and in violation of the primordial concepts of good faith, fairness and equity which should pervade all human relations.

Under the subdivision contract, respondent "guaranteed (petitioners as landowners) as the latter's fixed and sole share and participation an amount equivalent to forty (40%) percent of all cash receipts from the sale of the subdivision lots"

Respondent pray of the Rizal court of first instance that "after due trial, this Honorable Court render judgment modifying the terms and conditions of the contract ... by fixing the proper shares that should pertain to the herein parties out of the gross proceeds from the sales of subdivided lots of subjects subdivision".

Petitioners moved to dismiss the complaint principally for lack of cause of action, and upon denial thereof and of reconsideration by the lower court elevated the matter on certiorari to respondent Court of Appeals.

Respondent court in its questioned resolution of June 28, 1976 set aside the preliminary injunction previously issued by it and dismissed petition on the ground that under Article 1267 of the Civil Code which provides that

ART. 1267. When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part.¹

... a positive right is created in favor of the obligor to be released from the performance of an obligation in full or in part when its performance 'has become so difficult as to be manifestly beyond the contemplation of the parties.

Hence, the petition at abar wherein petitioners insist that the worldwide increase inprices cited by respondent does not constitute a sufficient casue of action for modification of the subdivision contract. After receipt of respondent's comment, the Court in its Resolution of September 13, 1976 resolved to treat the petition as special civil actionand declared the case submitted for decision.

The petition must be granted.

While respondent court correctly cited in its decision the Code Commission's report giving the rationale for Article 1267 of the Civil Code, to wit;

The general rule is that impossibility of performance releases the obligor. However, it is submitted that when the service has become so difficult as to be manifestly beyond the contemplation of the parties, the court should be authorized to release the obligor in whole or in part. The intention of the parties should govern and if it appears that the service turns out to be so difficult as have been beyond their contemplation, it would be doing violence to that intention to hold the obligor still responsible. ...²

It misapplied the same to respondent's complaint.

If respondent's complaint were to be released from having to comply with the subdivision contract, assuming it could show at the trial that the service undertaken contractually by it had "become so difficult as to be manifestly beyond the contemplation of the parties", then respondent court's upholding of respondet's complaint and dismissal of the petition would be justifiable under the cited codal article. Without said article, respondent would remain bound by its contract under the theretofore prevailing doctrine that performance therewith is ot excused "by the fact that the contract turns out to be hard and improvident, unprofitable, or unespectedly burdensome",³ since in case a party desires to be excuse from performance in the event of such contingencies arising, it is his duty to provide threfor in the contract.

But respondent's complaint seeks not release from the subdivision contract but that the court "render judgment I modifying the terms and Conditions of the Contract by fixing the proper shares that should pertain to the herein parties out of the gross proceed., from the sales of subdivided lots of subject subdivision". The cited article does not grant the courts this authority to remake, modify or revise the contract or to fix the division of shares between the parties as contractually stipulated with the force of law between the parties, so as to substitute its own terms for those covenanted by the partiesthemsevles. Respondent's complaint for modification of contract manifestly has no basis in law and therefore states no cause of action. Under the particular allegations of respondent's complaint and the circumstances therein averred, the courts cannot even in equity grant the relief sought.

A final procedural note. Respondent cites the general rule that an erroneous order denying a motion to dismiss is interlocutory and should not be corrected by certiorari but by appeal in due course. This case however manifestly falls within the recognized exception that certiorari will lie when appeal would not prove to be a speedy and adequate remedy.' Where the remedy of appeal would not, as in this case, promptly relieve petitioners from the injurious effects of the patently erroneous order maintaining respondent's baseless action and compelling petitioners needlessly to go through a protracted trial and clogging the court dockets by one more futile case, certiorari will issue as the plain, speedy and adequate remedy of an aggrieved party.

ACCORDINGLY, the resolution of respondent appellate court is reversed and the petition for certiorari is granted and private respondent's complaint in the lower court is ordered dismissed for failure to state a sufficient cause of action. With costs in all instances against private respondent.

Makasiar, Muñoz Palma, Concepcion, Jr., and Martin JJ., concur.

Footnotes

¹ Other Civil Code articles cited by respondent court as justifying the complaint were Articles 19 and 1159 which read:

ART. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due and observe honesty and good faith.

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ART. 1159. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

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